

# EXHIBIT J

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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JOHN GARLAND, et al., on behalf of themselves and all  
other similarly situated employees of the New  
York City Fire Department,

No. 21 Civ. 6586 (KAM)(CP)

Plaintiffs,

- against -

NEW YORK CITY FIRE DEPARTMENT, DANIEL A.  
NIGRO, in his official and individual capacities, JOHN  
DOE #1-10, in their official and individual capacities; and  
JANE DOE #1-10 in their official and individual capacities,

Defendants.

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**DON NGUYEN** declares, pursuant to 28 U.S.C. § 1746 and subject to the penalties  
of perjury, that the following is true and correct:

1. I have been the Assistant Commissioner of Equal Employment Opportunity  
("EEO") at the New York City Fire Department ("FDNY") since January 2016. Prior to January  
2016, I was the Deputy Director of FDNY EEO beginning in September 2015.

2. I submit this declaration in opposition to Plaintiffs' application for a  
preliminary injunction.

3. The sources of the information contained in this Declaration are my own  
personal knowledge, the books and records of FDNY and from information received by certain  
officers or agents of FDNY.

4. On October 20, 2021 the Commissioner of the New York City Department  
of Health and Mental Hygiene ("DOHMH"), David A. Chokshi, issued a Commissioner's Order  
requiring all employees of the New York City Fire Department to show proof of at least one dose  
of vaccination against COVID-19 by 5:00 p.m. by October 29, 2021 ("COH Order").

5. The COH Order requires that any City employee who has not provided the above-described proof must be excluded from their assigned work location beginning on November 1, 2021.

6. The COH Order specifically provides that “Nothing in this Order shall be construed to prohibit any reasonable accommodation otherwise required by law.”

7. The below-listed plaintiffs have reasonable accommodation requests to be exempt from the COH Order pending with FDNY EEO:

- 1) FF John Garland
- 2) Lt. Vincent Bottalico
- 3) FF Joseph Cicero
- 4) FF Michael Columbia
- 5) FF Andrew Costello
- 6) FF James Daly
- 7) FF Vincent Defonte
- 8) FF Kenenth Deforest
- 9) FF Sal DePaola
- 10) FF Brian Doyle
- 11) FF Nathan Evans
- 12) FF Christopher Filocamo
- 13) FF Kevin Garvey
- 14) FF Charles Guarnieri
- 15) FF Daniel OShea
- 16) EMT Margot Loth
- 17) FF Michael Lynch
- 18) FF Brian Smith
- 19) FF Kurt Pflumm
- 20) FF Christopher Raimondi
- 21) FF Paul Schweitt
- 22) Capt. Joseph Johnson
- 23) FF David Button
- 24) FF Paul Parr
- 25) FF Mark Sinclair
- 26) FF Daniel Baudille
- 27) FF John Dreher
- 28) FF Thomas Olsen
- 29) FF Giuseppe Penoro
- 30) FF Matthew Connor
- 31) FF Nicholas Mulligan
- 32) FF Anthony Perrone

- 33) FF Scott Ettinger
- 34) FF Anthony Mastropietro
- 35) FF Anthony Ruggiero
- 36) FF Joseph Murdocca
- 37) FF Keith Klein
- 38) FF Paul Vasquenz
- 39) FF Mark Henesy
- 40) FF Ryan Hall
- 41) FF Jude Pierre
- 42) FF Robert Ditrani
- 43) FF Brian Denzler
- 44) FF Michael McGoff
- 45) LT Timothy Heton
- 46) FF Joseph Bevilacqua
- 47) FF Dennis O'Keefe

8. Thus, all plaintiffs but for Plaintiff Taylor have accommodation requests to be exempt from the COH Order currently pending.

9. Any plaintiff who is granted a reasonable accommodation by the FDNY to be exempt from the COH Order will be restored to FDNY payroll and provided with back pay for the period of time they were on Leave Without Pay ("LWOP") status.

10. Any plaintiff who is denied a reasonable accommodation by the FDNY to be exempt from the COH Order will be provided with an opportunity to appeal that determination.

11. Any plaintiff whose reasonable accommodation is denied with a written determination of the request will be provided with written information on the appeals process, including a link to the City's online appeals request portal.

12. Plaintiffs must appeal the denial within three business days by submitting an appeal, and any materials supporting their appeal, via the online review request portal, which will automatically notify FDNY's EEO Office of the appeal. Upon notification of the appeal, FDNY's EEO Office will upload all records concerning the Agency determination of the

reasonable accommodation request within one business day. Supplemental material may be requested to make a determination on appeal.

13. If an appeal results in the grant of an accommodation, the plaintiff will be restored to payroll and paid back pay for the time they were on LWOP status.

14. If a plaintiff's appeal is denied, they must submit proof of the first dose of a vaccination within three business days, and if required, of a second dose within 45 days thereafter. If an employee refuses to be vaccinated within this timeframe after an appeal is denied, they will continue on LWOP.

Dated: November 29, 2021  
Brooklyn, New York

By:

  
DON NGUYEN